

No. 05-999 FEB 6 - 2006

---

**OFFICE OF THE CLERK**  
**In The**  
**Supreme Court of the United States**

---

HOUSTON COLLINS, JR.; SHARLET BELTON  
COLLINS; ROBERT EARL COLLINS; VELMA JEAN  
COLLINS; DARRELL CALENDER; LARRY VALLIERE;  
GREGORY TOLLIVER; SHERMAN TOLLIVER;  
DWAYNE KEMP; CHRISTOPHER WONG WON,  
DETRON BENDROSS, BERNARD VERGIS, ASHLEY  
GRUNDY, and EDDIE YOUNGBLOOD, III, individually  
and a.k.a 2 Live Crew; TIMOTHY VINCENT YOUNG,  
PRISCILLA MORRIS; LUTHER JEFFERSON;  
LEE ESTER CRUMP; and LINDA CHRISTMAS,

*Petitioners,*

vs.

FRANK AINSWORTH; COPIAH COUNTY, MISSISSIPPI,  
SHERIFF DEPARTMENT; COPIAH COUNTY,  
MISSISSIPPI; HINDS COUNTY, MISSISSIPPI SHERIFF  
DEPARTMENT; and RANKIN COUNTY,  
MISSISSIPPI SHERIFF DEPARTMENT,

*Respondents.*

---

**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fifth Circuit**

---

**PETITION FOR WRIT OF CERTIORARI**

---

CARROLL RHODES, ESQ.  
LAW OFFICES OF CARROLL RHODES  
Post Office Box 588  
Hazlehurst, MS 39083  
(601) 894-4323  
e-mail: crhode@bellsouth.net

## QUESTIONS PRESENTED FOR REVIEW

1. Do citizens who are convicted of state misdemeanor violations and sentenced to pay fines only but not sentenced to any confinement whatsoever have a cause of action under § 1983 for injunctive relief and damages if they have not satisfied the favorable termination requirement of *Heck v. Humphrey*?
2. Should an injunction apply to two sheriffs who assist another sheriff in conducting illegal driver license checkpoints by sending deputies to assist in the checkpoints if the two sheriffs were unaware of the illegal programmatic purpose of the checkpoints?

## LIST OF ALL PARTIES

The parties to the proceedings below were:

1. Houston Collins, Jr.; Sharlet Belton Collins; Robert Earl Collins; Velma Jean Collins; Darrell Calender; Larry Valliere; Gregory Tolliver; Sherman Tolliver; Dwayne Kemp; Christopher Wong Won; Detron Bendross; Bernard Vergis; Ashley Grundy, and Eddie Youngblood, III, individually and a.k.a 2 Live Crew; Timothy Vincent Young; Priscilla Morris; Luther Jefferson; Lee Ester Crump;<sup>1</sup> and Linda Christmas.
2. Frank Ainsworth; Copiah County, Mississippi Sheriff Department; Copiah County, Mississippi; Hinds County, Mississippi Sheriff Department; Rankin County, Mississippi Sheriff Department; Simpson County, Mississippi Sheriff Department; Smith County, Mississippi Sheriff Department; Jasper County, Mississippi Sheriff Department; the City of Brookhaven, Mississippi; Bruce Kirby; Chad Seals; Troy Davis; Tony Hemphill; John Goza; Harold Winters; Eddie Givens; and William Brown.

---

<sup>1</sup> Cynthia Wilbert, the administratrix of the estate of Lee Ester Crump, was substituted as a party for Lee Ester Crump who died in 2003.

## TABLE OF CONTENTS

	Page
Questions Presented for Review .....	i
List of All Parties .....	ii
Table of Contents.....	iii
Table of Authorities .....	vi
Citations of Official and Unofficial Opinions .....	1
A Concise Statement of the Basis for Jurisdiction .....	1
The Constitutional Provisions and Statutes Involved.....	2
A Concise Statement of the Case .....	2
Argument.....	11
1. Citizens who are convicted of state misdemeanor violations and sentenced to pay fines only but not sentenced to any confinement whatsoever have a cause of action under § 1983 for injunctive relief and damages even if they have not satisfied the favorable termination requirement of <i>Heck v. Humphrey</i> .....	11
2. An injunction should apply to two sheriffs who assisted another sheriff in conducting illegal driver license checkpoints by sending deputies to assist in the checkpoints if the two sheriffs were unaware of the illegal programmatic purpose of the checkpoints .....	16
CONCLUSION .....	19

## TABLE OF CONTENTS – Continued

	Page
<b>APPENDICES</b>	
Appendix 1 – Opinion of the Court of Appeals Affirming Orders of the District Court.....	App. 1
Appendix 2 – Judgment of the United States Court of Appeals for the Fifth Cir- cuit.....	App. 6
Appendix 3 – Memorandum Opinion Granting Summary Judgment.....	App. 8
Appendix 4 – Order of Dismissal Denying Injunc- tive Relief.....	App. 12
Appendix 5 – Opinion of the Court of Appeals.....	App. 15
Appendix 6 – Constitutional Provisions and Statutes Involved	
First Amendment to the United States Constitution .....	App. 44
Fourth Amendment to the United States Constitution .....	App. 44
Fourteenth Amendment to the United States Constitution .....	App. 44
28 U. S. C. § 1331. Federal ques- tions .....	App. 45
28 U. S. C. § 1343(a)(3) & (4). Civil rights and elective franchise .....	App. 45
28 U. S. C. § 2254. State custody; remedies in Federal courts.....	App. 46



## TABLE OF CONTENTS – Continued

	Page
42 U. S. C. § 1983. Civil actions for deprivation of rights.....	App. 49
42 U. S. C. § 1988(b). Proceedings in vindication of civil rights .....	App. 50
Fed. R. Civ. P. Rule 65(d). Injunctions .....	App. 50
Appendix 7 – Excerpts from Complaint .....	App. 52
Appendix 8 – Excerpts from Declaration of Sharlet Belton Collins.....	App. 54
Appendix 9 – Excerpts from Deposition of Frank Ainsworth .....	App. 57
Appendix 10 – Excerpts from Deposition of Darrell Calender.....	App. 61
Appendix 11 – Excerpts from Deposition of Priscilla Morris.....	App. 62
Appendix 12 – Excerpts from Deposition of Dwayne Kemp .....	App. 64
Appendix 13 – Criminal Record for Gregory Tolliver.....	App. 66
Appendix 14 – Criminal Record for Sherman E. Tolliver.....	App. 69
Appendix 15 – Criminal Record for Priscilla Morris .....	App. 72
Appendix 16 – Criminal Record for Luther Jefferson.....	App. 74
Appendix 17 – Criminal Record for Larry Valliere ....	App. 76
Appendix 18 – Justice Court Order for Darrell Calender .....	App. 78

## TABLE OF AUTHORITIES

## Page

## CASES:

<i>Abusaid v. Hillsborough County Board of County Commissioners</i> , 405 F. 3d 1298 (11th Cir. 2005).....	14
<i>Brown v. Plaut</i> , 131 F. 3d 163 (D. C. Cir. 1997).....	14
<i>Collins v. Ainsworth</i> , 382 F. 3d 529 (5th Cir. 2004)....	1, 8, 9
<i>Council for Periodical Distributors v. Evans</i> , 827 F. 2d 1483 (11th Cir. 1987) .....	17, 18
<i>DeWalt v. Carter</i> , 224 F. 3d 607 (7th Cir. 2000).....	14
<i>Figueroa v. Rivera</i> , 147 F. 3d 77 (1st Cir. 1998).....	14
<i>Gilles v. Davis</i> , 427 F. 3d 197 (3rd Cir. 2005).....	14
<i>Heck v. Humphrey</i> , 512 U. S. 477 (1994) .....	<i>passim</i>
<i>Jenkins v. Haubert</i> , 179 F. 3d 19 (2nd Cir. 1999) .....	14
<i>Magnum Import Co. v. Coty</i> , 262 U. S. 159 (1923) .....	1
<i>Obado v. State of New Jersey</i> , 328 F. 3d 716 (3rd Cir. 2003) ( <i>per curiam</i> ) .....	12
<i>Prieser v. Rodriguez</i> , 411 U. S. 475 (1973).....	11
<i>Randell v. Johnson</i> , 227 F. 3d 300 (5th Cir. 2000) ( <i>per curiam</i> ) .....	14
<i>Spencer v. Kemna</i> , 523 U. S. 1 (1998) .....	12, 13, 14
<i>Spring v. Caldwell</i> , 692 F. 2d 992 (5th Cir. 1982).....	12
<i>United States v. Bernard</i> , 351 F. 3d 360 (8th Cir. 2003) .....	13
<i>Wilkinson v. Dotson</i> , 544 U. S. 74 (2005) .....	14, 15

## TABLE OF AUTHORITIES – Continued

	Page
CONSTITUTIONAL PROVISIONS:	
U.S. Const. amend. I .....	2
U.S. Const. amend. IV .....	2
U.S. Const. amend XIV .....	2
OTHER AUTHORITIES:	
28 U. S. C. § 1254(1) .....	1
28 U. S. C. § 1292(a)(1) .....	10
28 U. S. C. § 1331 .....	2, 7
28 U. S. C. § 1343 .....	2, 7
28 U. S. C. § 2101(c) .....	1
28 U. S. C. § 2254 .....	2, 11, 12
42 U. S. C. § 1983 .....	<i>passim</i>
42 U. S. C. § 1988 .....	2, 7
Sup. Ct. R. 10(a) & (c) .....	1, 16, 19
Sup. Ct. R. 13(1) .....	1
Fed. R. Civ. P. 54(b) .....	8
Fed. R. Civ. P. 65 .....	2, 18



**CITATIONS OF OFFICIAL AND  
UNOFFICIAL REPORTS OF OPINIONS  
AND ORDERS BY LOWER COURTS**

The United States Court of Appeals for the Fifth Circuit rendered an unpublished opinion (*per curiam*) on December 21, 2005 that is set out in full at App. 1-5. The Court of Appeals rendered an earlier opinion that is published in the official reports as *Collins v. Ainsworth*, 382 F. 3d 529 (5th Cir. 2004) and set out in full at App. 15-43. The United States District Court for the Southern District of Mississippi entered two unpublished orders denying injunctive relief to all 19 petitioners and dismissing the claims of five (5) petitioners for injunctive relief and damages. Those two unpublished opinions are set out in full at App. 8-14.

---

**A CONCISE STATEMENT OF  
THE BASIS FOR JURISDICTION**

This Court has jurisdiction pursuant to 28 U. S. C. §§ 1254(1) and 2101(c) to review the judgment entered by the United States Court of Appeals for the Fifth Circuit on January 17, 2006, App. 6-7, and the opinion issued on December 21, 2005, App.1-5. This case involves a conflict in decisions between the Circuit Courts of Appeals, and it involves "questions of importance which it is in the public interest to have decided by this court of last resort." *Magnum Import Co. v. Coty*, 262 U. S. 159, 163 (1923); Sup. Ct. R. 10(a) and (c) and 13(1).

---

## **THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

This case involves the First, Fourth, and Fourteenth Amendments to the United States Constitution, 28 U. S. C. §§ 1331, 1343, and 2254; 42 U. S. C. §§ 1983 and 1988; and Fed. R. Civ. P. 65. The pertinent text of the constitutional provisions, statutes, and rules involved are set out in the appendix at App. 44-51.

---

## **A CONCISE STATEMENT OF THE CASE**

Sharlet Belton Collins and her husband, Houston Collins, Jr., "produced several concerts in Mississippi under the name S&H Productions from about 1991 to 2000." App. 17. A few of the concerts were held at Collins Field, "a multi-acre tract of land in rural Copiah County, Mississippi, owned by" Robert Collins, and his wife, Velma Collins. App. 17. "On or about May 16, 2000," Sharlet and Houston "made arrangements for the rap group 2 Live Crew" and local disc jockeys "to give a concert (the "Concert") on Sunday, June 4, 2000, at Collins Field." App. 17. The Concert venue "was to open early in the afternoon; and . . . start at 5:00 or 6:00 p.m." App. 17. Advertisements for the Concert began running on a local radio station on May 17, 2000. App. 17. Copiah County, Mississippi Sheriff, Frank Ainsworth, "stated that he had heard advertisements about the (what he classified as a "rock") Concert and was concerned that many young and old unlicensed drivers would be attending." App. 35. Ainsworth admitted that "he had received excessive noise, profanity, and trash complaints concerning a previous concert on Mother's Day" at Collins Field. App. 18, 35.

Sheriff "Ainsworth admitted that he [then] sent a warning through his deputies to" Sharlet and Houston Collins "not to hold the [2 Live Crew] Concert . . ." App. 35-36. The message delivered was that "the Concert was not going to happen. . . ." App. 18. Several days prior to the June 4, 2000 Concert, Ainsworth dispatched Copiah County Chief "Deputy William Brown and two other Copiah County deputies . . . to the Collins' home." App. 17-18. The deputies told Houston that Sheriff Ainsworth "did not want the upcoming Concert to proceed." App. 17. Deputy Brown admitted "that this request was made because calls Ainsworth had received about foul language and issues related to a previous concert held on Mother's Day" at Collins Field. App. 17.

Prior to June 4, 2000, Sheriff Ainsworth decided to conduct a driver's license checkpoint near the Concert because he thought "many unlicensed drivers of all ages would be attending the 'rock' Concert." App. 18. He thought he needed additional law enforcement officers from surrounding counties to assist with conducting the checkpoint. App. 58-59. Therefore, Ainsworth and his deputies called the sheriffs of Hinds, Rankin, Simpson, Smith, and Jasper Counties along with the City of Brookhaven, Mississippi Police Department, and asked them to send deputies to assist in conducting the roadblock and checkpoint. App. 58-60. The sheriffs complied with the requests and sent deputies to assist with the checkpoint. App. 58-60. However, those sheriffs "had no knowledge of any alleged unconstitutional purpose or actions relating to the June 4 roadblock." App. 3. Sheriff Ainsworth "was the sole policymaker regarding the procedures, customs, and practices used to effectuate the checkpoint." App. 18. And, he instructed all of the deputies how to conduct the checkpoint.

App. 18. The deputies from the surrounding counties, including Hinds and Rankin, “were under the control, authority, and policy of the Covich County Sheriff’s Department, having been deputized as Covich County deputies for the purposes of the roadblock.” App. 3.

Sheriff Ainsworth had a roadblock and checkpoint “set up along Old Port Gibson (‘OPG’) Road leading to Collins Field” at 7:00 a.m. on June 4, 2000. App. 18. The traffic was heavy, so “another roadblock and checkpoint were set up later facing the other direction on OPG Road.” App. 18. The deputies “stopped numerous vehicles at these checkpoints, including” vehicles in which all 19 petitioners were either passengers or drivers. App. 18-19. The deputies stopped vehicles where Houston Collins, Sharlet Collins, Robert Collins, Velma Collins, Darrell Calender, Larry Valliere, Gregory Tolliver, Sherman Tolliver, the members of 2 Live Crew (Dwayne Kemp, Christopher Wong Won, Detron Bendross, Bernard Vergis, Ashley Grundy, and Eddie Youngblood, III), Timothy Vincent Young, Luther Jefferson, Lee Esther Crump, Priscilla Morris,<sup>2</sup> and Linda Christmas were either drivers or passengers. App. 18-19. The deputies “confiscated beer in plain view” and seized beer and marijuana discovered in a search of some vehicles where they were given permission to search. App. 19.

---

<sup>2</sup> The prior opinion issued by the United States Court of Appeals for the Fifth Circuit rendered on August 20, 2004 states that Priscilla Morris was a passenger in the car driven by Luther Jefferson. App. 19. She was not. Mrs. Morris was not deposed until December 20, 2004. App. 63. This was after the case had been remanded from the Court of Appeals. She testified that she was a passenger in a vehicle with her husband and sister-in-law. Luther Jefferson testified on December 20, 2004, after remand, that he was in a vehicle alone.